

Flamingo Hilton Reno and United Brotherhood of Carpenters, Western Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 32-CA-14578

May 9, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed on March 9, 1995, the General Counsel of the National Labor Relations Board issued a complaint on March 21, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 32-RC-3855. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 10, 1995, the General Counsel filed a Motion for Summary Judgment. On April 12, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 26, 1995, the Respondent filed a response opposing the motion and requesting oral argument.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits that the Union was certified, but attacks the validity of the certification on the basis of its objections to the election and the Board's unit determination in the representation proceeding. In addition, the Respondent denies that it has refused to bargain with the Union and asserts as an affirmative defense that the Union has failed to comply with the reporting requirements of Nevada Revised Statute (NRS) 463A governing labor organizations representing gaming casino employees.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.

We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

As for the Respondent's further contention that it is excused from bargaining with the Union because the Union has failed to comply with the reporting requirements set forth in NRS 463A, we find that this contention also does not raise any issue warranting a hearing in this proceeding. The Respondent made similar contentions in the underlying representation proceeding, and the Respondent's contentions in that regard were fully litigated and considered by the Board in that proceeding. To the extent that the Respondent now contends that the Union's continued, post-certification, failure to comply with NRS 463A likewise excuses its failure to bargain with the Union, we reject this contention as without merit. See *Sahara Las Vegas Corp.*, 284 NLRB 337, 346 (1987), *enfd. mem.* 886 F.2d 1320 (9th Cir. 1989).

Finally, we also reject the Respondent's contention that it has not in fact refused to bargain with the Union. The Respondent admits that the Union requested bargaining by letter dated February 24, 1995, and that it responded thereto by letter dated February 27, 1995. Although the Respondent's February 27 letter did not specifically refuse the Union's request, it stated that the Respondent would not be able to make a final decision on the Union's request until it knew whether the Union had filed the required information with the Nevada Gaming Control Board under NRS 463A.030 and the date of the filing. By conditioning its agreement to bargain on such information (which, as indicated above, is not a valid condition on the Respondent's duty to bargain), we find that the Respondent in effect refused to bargain with the Union. See *id.*

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, the Respondent, a Nevada corporation with an office and place of business in Reno, Nevada, has been engaged in the operation of a hotel-casino. During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000, and in the cause and conduct of its business operations, purchased and received goods or services valued in excess of \$5000, which originated outside the State of Nevada. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ The Respondent's request for oral argument is denied.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held August 18, 1994, the Union was certified on February 22, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time hotel employees, employed by Respondent at its 225 North Sierra Street facility in Reno, Nevada; excluding all gaming department employees, engineering department employees, general and administrative department employees, marketing department employees, entertainment department employees, managerial and confidential employees, professional employees, employees represented for collective bargaining by other labor organizations, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

On or about February 24, 1995, the Union, by letter, requested the Respondent to bargain, and since on or about February 27, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 27, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Flamingo Hilton Reno, Reno, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Brotherhood of Carpenters, Western Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time hotel employees, employed by Respondent at its 225 North Sierra Street facility in Reno, Nevada; excluding all gaming department employees, engineering department employees, general and administrative department employees, marketing department employees, entertainment department employees, managerial and confidential employees, professional employees, employees represented for collective bargaining by other labor organizations, guards, and supervisors as defined in the Act.

(b) Post at its facility in Reno, Nevada, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 32 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Brotherhood of Carpenters, Western Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time hotel employees, employed us at our 225 North Sierra Street facility in Reno, Nevada; excluding all gaming department employees, engineering department employees, general and administrative department employees, marketing department employees, entertainment department employees, managerial and confidential employees, professional employees, employees represented for collective bargaining by other labor organizations, guards, and supervisors as defined in the Act.

FLAMINGO HILTON RENO